



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.

Commissioner

Paula Wilson

Executive Deputy Commissioner

November 3, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kevin C. Roe, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

John D. Elmer, Esq.
Kitay and Elmer
20 Court Street
Canton, New York 13617

Jerry H. Jacobson, M.D.
215 Rensselaer Avenue
Ogdensburg, New York 13669

RE: In the Matter of Jerry Jacobson, M.D.

Dear Mr. Roe, Mr. Elmer and Dr. Jacobson:

Enclosed please find the Determination and Order (No. BPMC-93-177) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

New York State Department of Health
Office of Professional Medical Conduct
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must than be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he determination of a committee on professional medical conduct may be reviewed by the administrative review board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

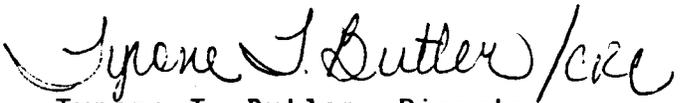
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Corning Tower -Room 2503
Empire State Plaza
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the
Administrative Review Board's Determination and Order.

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler /crc". The signature is written in dark ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

STATE OF NEW YORK ; DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X
IN THE MATTER ; DETERMINATION
OF ; AND
JERRY H. JACOBSON, M.D. ; ORDER
-----X NO. BPMC-93-177

KENDRICK A. SEARS, M.D., Chairman, MS. CLAUDIA GABRIEL and DONALD CHERR, M.D. duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. MICHAEL P. MCDERMOTT, ESQ., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

SUMMARY OF THE PROCEEDINGS

Notice of Hearing and
Statement of Charges: August 26, 1993

Pre-Hearing Conference: October 8, 1993

Hearing Dates: October 8, 1993

Place of Hearing: New York State Department
of Health
Syracuse Area Office
677 South Salina Street
Syracuse, New York 13202-3592

Date of Deliberations: October 8, 1993

Petitioner appeared by: Peter J. Millock, Esq.
General Counsel
New York State Department
of Health
By: Kevin C. Roe, Esq.
Associate Counsel

Respondent appeared by: Kitay and Elmer
20 Court Street
Canton, New York 13617
By: John D. Elmer, Esq.

WITNESSES

For the Petitioner:

1. Daniel Mart
2. Robert Lesperance

For the Respondent:

1. Jerry H. Jacobson, M.D., the Respondent

STATEMENT OF CHARGES: The Statement of Charges charges the Respondent with having willfully abused a patient physically and with engaging in conduct in the practice of the profession which evidences moral unfitness to practice medicine.

The Charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part hereof.

FINDINGS OF FACT

Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All hearing Committee findings were unanimous unless otherwise specified.

GENERAL FINDING

1. The Respondent is a physician duly licensed to practice medicine in the State of New York under license number 047600 issued by the State Education Department on August 12, 1948 (Pet's. Ex. 1).

FINDINGS AS TO PATIENT A

2. On September 27, 1988, Patient A, an 85 year old male nursing home resident was taken to the Respondent's office for an ophthalmological examination (Pet's. Ex. 4; Tr. 12-13)

3. During the course of the examination the Respondent kicked Patient A in the left shin causing a four inch in diameter bruise and a two inch in diameter area of sloughed skin with active bleeding. The Respondent also struck Patient A over the head with a manila folder with papers (Pet's. Ex. 4; Tr. 14-16, 40)

4. The Respondent admits that he kicked Patient A in the shin and swatted him in the face with his chart (Pet's. Ex. 2; Tr. 66)

VOTE OF THE HEARING COMMITTEE

(All votes were unanimous unless otherwise specified)

FIRST SPECIFICATION: (Willfully abusing a patient physically)

SUSTAINED

SECOND SPECIFICATION: (Engaging in conduct in the practice of the profession which evidences moral unfitness to practice medicine)

NOT SUSTAINED

DETERMINATION OF THE HEARING COMMITTEE

The Respondent readily admitted that he kicked and struck Patient A, and acknowledged that his actions were unfortunate and regrettable, but claims that he was "terribly" provoked by the patient. The Respondent testified, "I regret enormously, I lost control, but I was unutterably provoked. That's the whole story." (Pet's. Ex. 2; Tr. 66)

Based on a review of the entire record in this case, the Hearing Committee concludes that there was some verbal exchange between the patient and the Respondent prior to the Respondent kicking and striking the patient, but the Hearing Committee is unable to determine the exact nature of the exchange. Nonetheless, the Hearing Committee concludes that no verbal exchange, no matter how offensive or provocative, would justify the Respondent's kicking and striking the patient.

The Hearing Committee is aware that the Respondent has practiced medicine for forty-five years. There is no evidence of a pattern of abusive behavior by the Respondent. This was an unfortunate isolated incident in an otherwise unblemished career.

The hearing Committee determines that a CENSURE AND REPRIMAND would be an appropriate penalty in this case.

ORDER

IT IS HEREBY ORDERED, THAT THE RESPONDENT IS CENSURED AND REPRIMANDED.


KENDRICK A. SEARS, M.D.
Chairman

MS. CLAUDIA GABRIEL
DONALD CHERR, M.D.

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X
IN THE MATTER : STATEMENT
OF : OF
JERRY H. JACOBSON, M.D. : CHARGES
-----X

JERRY H. JACOBSON, M.D., the Respondent, was authorized to practice medicine in New York State on August 12, 1948 by the issuance of license number 047600 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 from 215 Rensselaer, Avenue, Ogdensburg, New York 13669.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A (Patient A is identified in the attached appendix), an 85 year old male nursing home resident, from on or about April 28, 1988 to on or about September 27, 1988. On September 27, 1988, at his office, Respondent struck Patient A over the head with a manila folder and papers, and kicked the patient in the shin causing a 4 inch

in diameter bruise and a two inch in diameter area of sloughed skin with active bleeding.

FIRST SPECIFICATION

Respondent is charged with having willfully abused a patient physically in violation of New York Education Law §6530(31) (McKinney's Supp. 1993), in that, Petitioner alleges:

1. The facts in paragraph A.

SECOND SPECIFICATION

Respondent is charged with engaging in conduct in the practice of the profession which evidences moral unfitness to practice medicine in violation of New York Education Law §6530(20) (McKinney's Supp. 1993), in that, Petitioner alleges:

2. The facts in paragraph A.

DATED: Albany, New York

August 26, 1993



PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical
Conduct